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August 4, 2004

Ms. Leslie Cole, Executive Director
Environmental Quality Commission
14 Reilly Road
Frankfort, KY 40601

Re: Proposed Amendments to 401 KAR 5:030

Dear Ms. Cole:

This letter is in response to EQC's comments at its December meeting of the cabinet's proposed antidegradation regulation, 401 KAR 5:030. The cabinet understands that EQC's reasoning behind the disapproval was due to the cabinet's continued use of the "designational" (as opposed to the parameter-by-parameter) approach and due to the cabinet's position that certain categories of dischargers need not be subject to further antidegradation review.

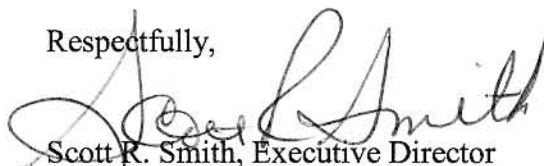
From the beginning of the process of considering antidegradation implementation methodology, the cabinet has believed that high quality water should be looked at holistically. While EQC may not agree and wishes the cabinet would adopt the parameter-by-parameter approach, U.S. EPA has approved the designational approach in Kentucky and in other states in our region and nationally. The designational approach capitalizes on the strengths of Kentucky's long-standing biological monitoring program by categorizing waters in a holistic manner based on actual biological health. Accordingly, waters will be categorized as Impaired, High Quality, Exceptional, or Outstanding National Resource Water, depending upon holistic indicators for the entire stream segment. This provides the agency and the affected public with a clear and concise method of determining the level of water quality for a given stream segment and a mechanism by which all waters can be further protected and enhanced. In addition to the protections afforded by this proposed regulation, all waters of the Commonwealth will continue to be protected via the stringent water quality-based permitting procedures that the agency has historically utilized for point source discharges to waters of the Commonwealth.

In Response (45) of the Statement of Consideration, the cabinet laid out more fully how current regulatory programs address antidegradation review requirements for several categories of dischargers. The following is a brief summary of the clarifications outlined in Response (45):

- CAFOs are no discharge permits, and thus protect high quality and exceptional water;
- Stormwater is largely controlled by selection and implementation of best management practices, not by numerical permit limits;
- Facility modifications that result in less than a twenty percent increase in pollutant loading have been considered insignificant by U.S. EPA and by the cabinet in the current 401 KAR 5:030 implementation procedures for exceptional water that was approved twice by U.S. EPA;
- Publicly-owned treatment works (POTWs) must prepare regional facility plans that require examination of alternatives and economics, and there is extensive public involvement;
- Alternatives to single-family discharges are evaluated by the cabinet, and permitted surface water discharges are approved only if no other feasible alternative is available; and
- Coal mining activities are addressed through the existing KPDES permit program that regulates the quality of discharges from permitted sediment ponds, which have national technology-based limits set by U.S. EPA and the cabinet. More stringent limits would result in larger sediment ponds that would increase stream loss. Activities that result in physical discharge of fill material to streams require a Corps of Engineers 404 permit that require an alternatives analysis to avoid and minimize stream impacts. Mitigation is required if impact of loss is unavoidable. The economic importance of coal mining to the areas in which the activity occurs is well documented.

The proposed regulation provides for significant improvements in the degree of protection to the waters of the Commonwealth. The cabinet has worked diligently to balance the interests and concerns of all parties who invested themselves in the development of these regulations through the public participation process. The cabinet believes that the proposed regulation represents a fair and balanced compromise and is in the best interest of all Kentuckians.

Respectfully,



Scott R. Smith, Executive Director
Office of Regulatory Affairs
Environmental and Public Protection Cabinet